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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 861

BROTHERHOOD OF RAILROAD TRAINMEN, SWITCHMEN'S UNION OF NORTH AMERICA, *Petitioners*,

v.

THE AKRON & BARBERTON BELT RAILROAD COMPANY, ET AL., *Respondents*.

PETITIONERS' REPLY TO RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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This reply brief is directed at the Respondents' response concerning two of the issues which Petitioners have asked this Court to review.

1. The first of these issues is whether the Court below was correct in holding that the Railway Labor

Act prohibits parties subject to the Act from entering into agreements of limited duration with the expressed intent that upon the expiration of the agreements the prior conditions of employment as modified by the agreements are again to become effective. The issue arose with respect to ten agreements which were of limited duration.

The Respondents contend that all that is involved is a matter of contract construction and the issue is not of sufficient importance to occupy the time of this Court. This contention is in error. The issue is concerned not only with the construction of contracts, but primarily with the construction of the Railway Labor Act.

The opinion of the Court below shows quite clearly that its holding that the substantive changes in work rules, resulting from agreements of limited duration, continue in effect upon the expiration of the Arbitration Award did not result from its interpretation of the agreements but from its interpretation of the Railway Labor Act. Indeed, the Court specifically so declared in its opinion of July 31, 1967. The Court stated (App. at 45a-46a):

> "Our ruling is that the work rules created by the Award constituted a new plateau that was not automatically eroded when the Award expired. . . . The ruling is not based on the Award, which had only a 2-year life, or on any agreement of the parties. The predicate of our ruling is, simply, the force of the Railway Labor Act. . . . This new plateau reasoning applies even though the work rules are established by agreements of limited duration. *'The effect of § 6 is to prolong agreements subject to its provisions regardless of what*

they say as to termination.'[17]'' (Footnote omitted, emphasis added.)

It is this ruling of the Court, dealing with the statutory construction of the Railway Labor Act as it relates to the contract-making power of the parties subject to the Act, which we seek to have reviewed by this Court. We submit the issue is of fundamental importance and one which is the proper concern of this Court.

2. The second issue upon which we feel compelled to respond concerns the dispute between the Petitioner Brotherhood of Railroad Trainmen and the Respondent Richmond, Fredericksburg and Potomac Railroad Company. In our petition, we conceded that this issue was not of sufficient importance in and of itself to warrant a grant of certiorari but that if this Court decided to review any of the basic determinations of the Court below it likewise should review that Court's holding with respect to this issue.

However, the Respondents' misstatement of the facts surrounding this issue cannot be permitted to stand unchallenged. The Respondents state that our position here that there was no agreement between the Brotherhood and the railroad was not raised heretofore, and that we had conceded in the Courts below that an agreement had been reached. This statement is not true.

The Respondents refer to the Stipulation entered into by the parties in the District Court on this issue which recites that the parties agreed that the railroad could make certain changes. The Respondents know full well, however, that that language was not intended as a concession by the Brotherhood that the corre-

spondence between the parties amounted to an agreement so as to preclude the Brotherhood from arguing to the contrary. They know this to be the fact because the matter was discussed at the time the Stipulation was prepared and they agreed that it would not so be used.

The Respondents point further to a statement taken from a pre-trial memorandum filed by the Brotherhood in the District Court in which it argued that the "only consensual arrangement agreed to by BRT was that the carrier could operate with crews smaller than prescribed in pre-existing rules 'until January 25, 1966.' " This too, Respondents assert, shows that the Brotherhood had taken the position that an agreement had been reached. The Respondents, however, omitted the remaining three sentences immediately following the sentence they quote. The rest of the paragraph reads:

> "The BRT never agreed to any proposal that meant anything else. If the agreement was not the agreement which the BRT said it was accepting, then there was no agreement between the parties reducing the requirements of the pre-existing crew-consist rules. Assuredly, the pre-existing crew-consist rules are now governing, either because the only agreement to reduce their requirements was to reduce them temporarily until January 25, 1966, or because there never was an agreement to reduce them at all."

The Brotherhood, contrary to Respondents' assertion, argued both in the District Court and in the Court of Appeals that the correspondence between the Brotherhood and the railroad did not result in agreement. The final letter of the railroad to the Brotherhood candidly admitted "that there is a difference

between the parties on the duration of the agreement." (R. 90) We again submit that if any part of the decision of the Court below is reviewed by this Court that this issue be reviewed as well.

Respectfully submitted,

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